

REMARKS

Claims 1-6 and 21-34 and 50-52 are presently pending in this application. Claims 1 and 26 are independent. Applicant respectfully traverses the Rejections/Objections, which are discussed below.

Allowable Subject Matter

Applicant thanks the Office for indicating that dependent claim 3 would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims.

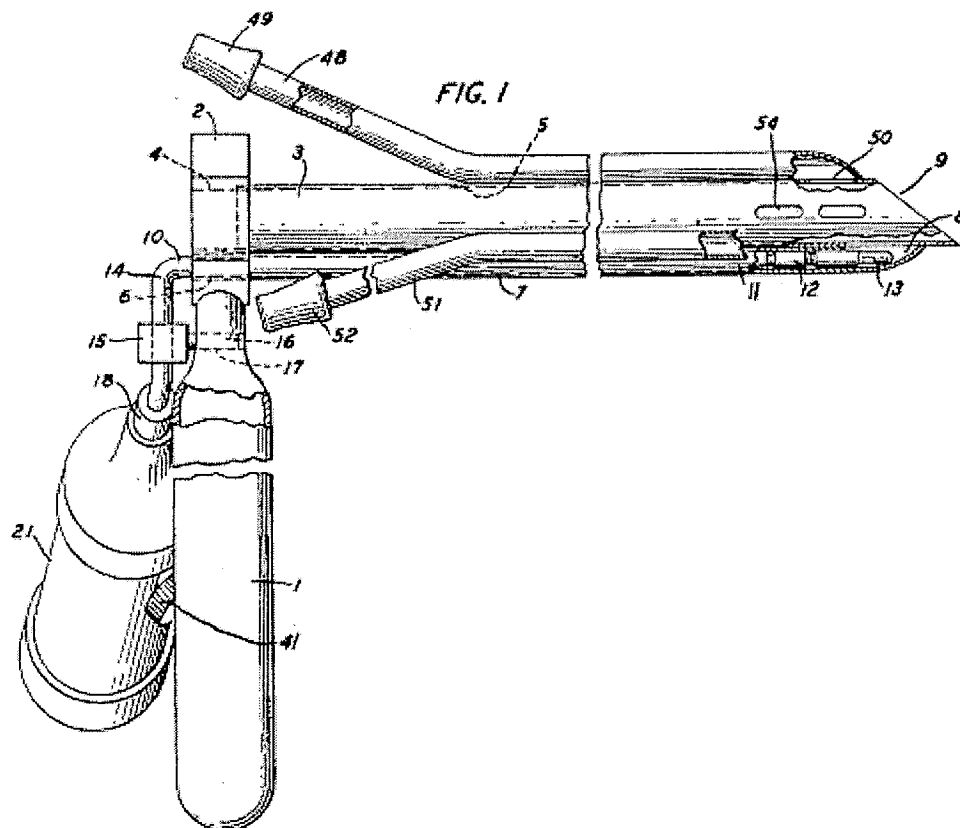
Claim Rejections under 35 U.S.C. § 102

Claims 1-2, 4, 6, 21-28, and 30-34 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 2,911,968 to Schueler et al. ("Schueler"). Applicant respectfully disagrees.

Independent Claim 1

Schueler fails to anticipate claim 1 because Schueler fails to disclose each and every element of claim 1. For example, Schueler does not disclose "A blade assembly for a laryngoscope ... comprising: ... an elongated blade ... said blade being substantially flat and thin," as claim 1 requires.

The Office contends that element 3 from Schueler's Figure 1 (reproduced below for convenience) is an elongated blade. It is not.



Schueler's Figure 1

Element 3 is a hollow tube. *See* Schueler at col. 2, lines 16-39. The “hollow tube 3 extends substantially at a right angles” to the handle 1 and can be of “any required or convenient length.” *Id.* The tube 3 has a “longitudinal bore 5 of an appropriate diameter... for the insertion there through of an appropriate instrument such as a biopsy forceps or a telescope.” *Id.* In sum, Schueler discloses a hollow tube into which instruments can be inserted. As Applicant pointed out in the response to the previous Office Action, a hollow tube is not an “elongated blade.”

Nevertheless, even if we assume for the sake of argument that the tube disclosed in Schueler is a “blade” (it clearly is not), Schueler does not anticipate because claim 1 now expressly requires that the “blade” be substantially flat and thin and the tube disclosed in Schueler is not substantially flat and thin.

Applicant, therefore, respectfully requests withdrawal of the rejections of claim 1 and of claims 2, 4, 6, and 21-25, which depend from claim 1.

Independent Claim 26

Schueler fails to anticipate claim 26 because Schueler fails to disclose each and every element of claim 26. For example, Schueler does not disclose “a first guide means for guiding a first aspiration tube to a patient’s laryngeal gutter,” as is required by claim 26.

In support of its contention that Scheuler discloses this feature, the Office cites to Scheuler at Col. 4, lines 21-35. This portion of Scheuler is reproduced below.

The bronchoscope embodiment of Figure 1 includes an upper aspirator tube 48 radially aligned with handle 1 and provided with a hose nipple 49 and extending the length of tube 3, merging thereinto at the remote end to form an upper aperture 50. As an optional feature, a lateral aspirator tube 51 may be at some degrees from the tube 43, substantially to the opposite side of the handle 1 from the enlarged end 18 of the illuminating rod, and is provided also with a hose nipple 52, extends the length of tube 3, and merges at the remote end into the tube 3 to form the lower port 53. A plurality of apertures 54 through the remote end region of the tube are provided as air holes for ventilating the bronchial cavity.

As is plainly evident, the above portion of Scheuler merely discloses that the apparatus includes two aspirator tubes (tube 48 and tube 51). However, claim 26 requires more than merely two aspirator tubes. Claim 26 expressly requires means for guiding the first aspirator tube and means for guiding the second aspirator tube. As is plainly evident from figure 1 of Scheuler, the apparatus disclosed does not include any means for guiding tubes 48 and 51. Thus, Scheuler does not anticipate claim 26.

Dependent Claims 25 and 33

Claim 25 depends from claim 1 and is not anticipated for the reasons given above. Additionally, claim 25 requires “a first aspiration tube inserted into the first guide tube and a second aspiration tube inserted into the second guide tube.” This feature is not disclosed in Schueler.

In support of its contention that Scheuler discloses this feature, the Office cites to Scheuler at Col. 4, lines 21-35. This portion of Scheuler is reproduced above in connection with claim 26. As is plainly evident, the cited portion of Scheuler merely discloses that the apparatus includes two aspirator tubes (tube 48 and tube 51). However, claim 25 requires more than merely two aspirator tubes. Claim 25 expressly requires that

each aspiration tube be inserted into a guide tube. As is plainly evident from figure 1 of Scheuler, neither aspirator tube 48 nor aspirator tube 51 is inserted into a guide tube. For this additional reason, Scheuler does not anticipate claim 25.

Claim 33 depends from claim 26. Like claim 25, claim 33 requires “a first aspiration tube inserted into the first guide tube and a second aspiration tube inserted into the second guide tube.” Thus, the above remarks apply to claim 33.

Claim Rejections under 35 U.S.C. § 103

Claims 5 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schueler in view of U.S. Patent No. 6,248,061 to Cook, Jr. (“Cook”). Applicant respectfully traverses and submits claims 5 and 29 recite subject matter not disclosed or suggested by the combination of Schueler and Cook.

Dependent Claim 5

Claim 5, which depends from claim 1, is patentable for at least the same reasons stated above regarding claim 1 and the rejection of claim 5 should be withdrawn on this basis alone. Claim 5, however, is also patentable because neither Schueler nor Cook, considered alone or in combination, teach or suggest all of the elements of claim 5. For instance, neither reference teaches a blade assembly comprising “a tongue deflector having a portion extending in a direction transverse to the upper surface of the elongated blade along a marginal edge segment of said elongated blade,” as claim 5 requires.

The Office has alleged that it would be obvious to combine the teachings of Schueler with the curved blade of Cook. *See* Office Action at pp. 4-5. However, the Office has failed to allege that either reference discloses “a tongue deflector having a portion extending in a direction transverse to the upper surface of the elongated blade along a marginal edge segment of said elongated blade.” Because the office does not even contend that either reference discloses the recited tongue deflector, the Office has not established a prima facie case of obviousness.

The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. *See* MPEP § 2142. To support an obviousness rejection the examiner must clearly articulate the reasons why the claimed invention would have been

obvious. *See* MPEP § 2143. In so doing, “[a]ll words in a claim must be considered.” MPEP § 2143.03. In this case, the Office has not met its burden because it has failed to contend that – yet alone clearly articulate the reasons why – each and every element of claim 5 is present in the prior art.

Accordingly, the rejection of claim 5 as unpatentable over Schueler in view of Cook is improper because the combination fails to teach or suggest all the elements of claim 5. Applicant, therefore, respectfully requests that the rejection of claim 5 be withdrawn for this additional reason.

Dependent Claim 29

Claim 29, which depends from claim 26, is patentable for at least the same reasons stated above regarding claim 26 and the rejection of claim 29 should be withdrawn on this basis alone.


New Claims

New claims 50-52 are sought to be added. These claims depend from claim 1.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections, and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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